UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

DYCORA TRANSITIONAL HEALTH- CLOVIS LLC

Employer

and **Case 32-RD-213115**

PATRICK KRONYAK

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015

Union

and

HEALTHCARE SERVICES GROUP, INC.

Involved Party

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to decertify the Union as the collective-bargaining representative of employees in a unit at the Employer's facility in Clovis, California. It is undisputed that the Employer is the successor employer to predecessor employer Beverly Healthcare-California, Inc. d/b/a/ Golden Living Center-Clovis (Beverly). Through its statement of position and various offers of proof submitted at hearing, the Employer essentially contends that the unit description in the petition is not appropriate because the Employer does not directly employ the unit housekeepers, janitors, and laundry aides, who are employees of another employer, Healthcare Services Group, Inc. (HSG). The Employer also contends that the housekeepers, janitors, and laundry aides do not share a community interest with the Employer's employees. Additionally, the Employer contends that housekeepers, janitors, and laundry aides should be excluded because HSG purportedly did not expressly consent to their inclusion in the bargaining unit. In this regard, the Employer argued that *Miller & Anderson, Inc.*, 364 NLRB 39, (2016), was incorrectly decided, and that the Board should return to the standard in *Oakwood Care Center*, 343 NLRB 659 (2004). HSG appeared at the hearing and stated that it was in agreement with the Employer's position, adding that HSG employees would have to submit their own decertification petition. The Petitioner appeared to side with the Employer but did not attempt to amend his petition to exclude the housekeepers, janitors, and laundry aides and presented no arguments at the hearing. The Union contends that the unit description is appropriate because it reflects the currently recognized bargaining unit.

Upon examination of the underlying policies for conducting decertification elections, I have determined that as a general rule, the bargaining unit in which the decertification election is held must be coextensive with the certified or recognized unit. As explained below in more detail, nothing in this record appears to warrant deviating from that general rule. I have concluded that the recognition language in the Beverly-Union January 1, 2014 to December 31,

2016 collective-bargaining agreement (the Agreement) and the December 6, 2016 Memorandum of Understanding between the Employer and the Union, which extended the Agreement to December 31, 2017, establish that the petitioned-for unit is coextensive with the recognized unit and I am directing an election therein.

I. FACTS

The Employer operates a skilled nursing facility in Clovis, California. HSG provides the Employer with the employees who perform housekeeping, janitorial, and laundry services for the Employer. The Union has continuously represented employees employed by the Employer and its predecessor Beverly and housekeepers, janitors, and laundry aides employed by HSG at the Clovis facility since at least 2014. According to the testimony of Employer Human Resources Representative Keri Oviedo, the Employer took over management of certain Beverly facilities, including the facility involved in these proceedings in December 2016. Beverly and the Union were parties to the Agreement, which contains, in Article 1, the following recognition language:

> The Union and separate employers Beverly Healthcare-California, Inc. or GGNSC Stockton LP d/b/ a Golden LivingCenter-Fresno, Golden LivingCenter-Clovis, Golden LivingCenter-Galt and Golden LivingCenter-Hy-Para, which all parties agree are separate employers, each agree to associate with the other for the purpose of recognizing the Union as the exclusive bargaining representative of a single bargaining unit, as provided for under federal labor law regarding multi-employer bargaining, for all full-time and regular part-time employees in the classifications identified below and any other classifications which may be established within the scope of the duties now included at each respective Employees Facility:
>
> Included: certified nursing aide, nursing assistant, restorative nursing aide, cook, dietary aide, activity assistant, medical records assistant and receptionist (at Golden LivingCenter-Fresno, only).
>
> Excluded: registered nurses, licensed vocational nurses, social service assistants, central supply clerks, office and clerical employees, confidential employees, professional employees, supervisory employees, and guards, as defined in the National Labor Relations Act.
>
> …
>
> Employees in the following classifications working at the Facilities who are employed by HSG, a separate employer: housekeeper, janitor and laundry aide shall also be recognized as part of the above single bargaining unit.

On December 6, 2016, the Employer and the Union entered into a Memorandum of Understanding (the MOU) in which they agreed to alter the wage, union security language, and term of the Agreement and that, "All other terms & conditions of the attached collective bargaining agreements [between each employer in the multi-employer bargaining association and the Union, including the Agreement] shall continue in full force and effect until 12/31/2017."

On October 5, 2017, the Employer withdrew from multi-employer bargaining. To this end, the Employer's attorney wrote to the Union stating that "each Dycora entity is a separate bargaining unit." In that letter, the Employer made no mention of HSG or of its employees. HSG did not write separately to the Union withdrawing from multi-employer bargaining. The Employer and the Union have not started bargaining for a successor agreement covering this facility. Human Resources Representative Oviedo testified that bargaining over another facility of the Employer has commenced but that facility is not at issue here. The record does not reflect any agreement between the Employer and the Union to change the scope of the recognized bargaining unit by excluding the HSG housekeepers, janitors, and dietary aides, nor does it reflect any agreement between HSG and the Union regarding any changes in the scope of the bargaining unit.

HSG Director of Operations Ian Hanley testified that HSG had direct contact with the Union regarding existing terms and conditions of employment including dealing with individual employees' vacation and hours. Additionally, Hanley testified that HSG follows the Agreement, including with respect to grievances, discipline, and wages. Hanley did not testify as to any instances in which HSG and the Union have engaged in collective bargaining negotiations directly.

II. ANALYSIS

All parties involved in this proceeding agree that all full-time and regular part-time certified nursing aides, nursing assistants, restorative nursing aides, cooks, dietary aides, activity assistants, and medical records assistants should be included in the voting group, but the Employer and HSG dispute that the employees employed by HSG, including housekeepers, janitors, and laundry aides should be included in the bargaining unit.

Mindful of the fact that Congress made no provision for the decertification of part of a certified or recognized unit, the existing unit normally is the appropriate unit in decertification cases. *Campbell Soup Co*., 111 NLRB 234, 235 (1955). Accordingly, the bargaining unit in which the decertification election is held must be coextensive with the certified or recognized unit. *Id.*; *W. T. Grant Co*., 179 NLRB 670 (1969); *Bell & Howell Airline Service Co*., 185 NLRB 67 (1970); *WAPI-TV-AM-FM*, 198 NLRB 342 (1972); and *Mo's West*, 283 NLRB 130 (1989).

The documentary evidence[1] in the record clearly establishes that the housekeepers, janitors, and laundry aides have been, for years, included with the Employer's employees in a single unit. The record does not reflect any agreements between the parties to modify the scope of the Unit. The Employer's letter of October 5, 2017, withdrawing from multi-employer bargaining makes no mention of HSG or its employees. HSG did not separately withdraw from multi-employer bargaining. Clearly, since HSG's employees have been at all relevant times part

[1] The documentary evidence relied on is the Agreement between predecessor Beverly and the Union, which expired on December 31, 2016, and the December 6, 2016 MOU signed by the Employer and the Union to alter the wages, union security language, and term of the Agreement, but to extend all other terms and conditions of employment in full force and effect until December 31, 2017.

of the recognized bargaining unit, all parties understood that the Employer's withdrawal from multi-employer bargaining would result in its continued recognition of the Union as the representative of all the unit employees, including the unit employees employed by HSG, and no separate notification of withdrawal by HSG from multi-employer bargaining was necessary.

During the hearing the Employer and HSG sought to stress that they are separate entities. To this end, Human Resources Representative Oviedo testified that that HSG "is its own employer, but for purposes of bargaining, they could be coordinated with us." I find that it is unnecessary to make a determination as to the nature of the relationship between the Employer and HSG as that determination would not be helpful in establishing what the currently recognized bargaining unit is. As to the argument that HSG never specifically agree to the inclusion of its employees in the recognized unit, I find that contention disingenuous. The record, including Hanley's testimony, attests to the fact that HSG has, at the very least, acquiesced to the inclusion of its employees in the bargaining unit.

With respect to the Employer's argument that the housekeepers, janitors, and laundry aides do not share a community of interest with the other employees employed in the unit, I note that "it is established Board policy that the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit; hence, community-of-interest factors which would be considered in making an initial appropriate unit determination are not relevant herein." *Fast Food Merchandisers, Inc.*, 242 NLRB No. 6 (1979).

The Employer suggested at hearing that the instant case could serve as a vehicle to overturn the Board's decision in *Miller & Anderson,* 364 NLRB 39, (2016)(Board overturned *Oakwood Care Center*, 343 NLRB 659 (2004), and returned to the rule in *M.B. Sturgis*, 331 NLRB 1298 (2000), finding employer consent is not necessary for units that combine jointly employed and solely employed employees of a single user employer). I find this proposition to be of no relevance to determining the composition of the recognized unit in this case. In that regard, *Miller & Anderson* involved an initial appropriate unit determination, inapposite to the situation at hand. Similarly, I find that other cases cited by the Employer do not apply to the instant case (e.g., *Illinois Canning* 125 NLRB 699 (1959), involving agricultural employees).

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time certified nursing aides, nursing assistants, restorative nursing aides, cooks, dietary aides, activity assistants, and medical records assistants employed by the Employer, and all employees employed by Healthcare Services Group, Inc., (including housekeepers, janitors, and laundry aides) employed at the Employer's facility in Clovis, California.

Excluded: All registered nurses, licensed vocational nurses, social service assistants, central supply clerks, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 2015.

A. Election Details

The election will be held on Wednesday, May 23, 2018, from 6:00 a.m. to 8:00 a.m. and 2:00 p.m. to 4:00 p.m. in the Blue Room dining room located at 111 Barstow Avenue, Clovis, California.

B. Voting Eligibility

Eligible to vote are those in the unit who are employed by Dycora Transitional Healthcare-Clovis LLC and were employed during the payroll period ending **May 9, 2018,** and those in the unit employed by Healthcare Services Group and were employed during the pay period **May 12, 2018,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off;

Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer and involved party Healthcare Services Group, Inc. must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters that they employ.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 17, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be

posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 15th day of May 2018.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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